



## Filing Receipt

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**PROJECT NO. 51840**

<b>RULEMAKING TO ESTABLISH</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ELECTRIC WEATHERIZATION</b>	<b>§</b>	
<b>STANDARDS</b>	<b>§</b>	<b>OF TEXAS</b>

**TEXAS PUBLIC POWER ASSOCIATION'S COMMENTS  
ON PROPOSAL FOR PUBLICATION**

The Texas Public Power Association (TPPA) appreciates the opportunity to respond to the Proposal for Publication (PFP) by the Public Utility Commission of Texas (Commission) regarding its rulemaking to establish electric weatherization standards. These comments are submitted on behalf of TPPA and do not necessarily reflect the opinions of any individual TPPA member.

Formed in 1978, TPPA is the statewide association for the 72 municipally-owned utilities (MOUs) in Texas. TPPA members serve urban, suburban, and rural Texas and vary in size from large, vertically-integrated utilities to relatively small distribution-only systems. We are proud to serve approximately 5.1 million Texans across the state. Sixty-three of our members operate within the Electric Reliability Council of Texas (ERCOT) region<sup>1</sup> and nine are located within either the Southwest Power Pool (SPP) or Midcontinent Independent System Operator (MISO) region. MOUs offer a long track record of stability, and we serve an essential role in providing secure and reliable power to the wholesale electricity markets in these regions, including ERCOT. Many of our member systems have been providing stable and reliable electric power to communities in Texas for over 100 years, and collectively, our members provide more than 10,500 MW of generation and maintain nearly 3,000 miles of high-voltage transmission assets.

**I. Background and Executive Summary**

Under new PURA § 35.0021, as created by Senate Bill 3, 87th regular session (SB3), the Commission shall develop rules that require each provider of electric generation service to prepare its owned generation assets to adequately generate electric service during a weather emergency according to reliability standards adopted by the Commission. Similarly, under new PURA § 38.075, as created by SB3, the Commission shall develop rules that require each MOU, electric

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<sup>1</sup> 70% of Lubbock Power and Light's customers were moved to the ERCOT region on May 29 and 30, 2021. The remainder will be transitioned from SPP in 2023.

cooperative, and transmission and distribution utility providing transmission service in the ERCOT power region to implement measures to prepare the cooperative's or utility's facilities to maintain service quality and reliability during a weather emergency according to standards adopted by the Commission.

On August 26, the Commission filed the PFP in the Texas Register, seeking comments by September 16. These comments are timely filed.

TPPA supports the Commission's two-phase approach to this rulemaking and is broadly supportive of the PFP, as it works to establish immediate improvements to prepare for this incoming winter while also allowing time for stakeholder input as ERCOT develops its weather study and the Commission develops comprehensive weather preparation standards. However, TPPA emphasizes the need for the entire electric supply chain to be weatherized. To that end, it is imperative that the Commission and the Railroad Commission coordinate on these weatherization rules and produce complimentary standards to ensure that the resulting rules do not result in unnecessary costs to ratepayers. TPPA believes that the Texas Energy Reliability Council, once established, may provide a valuable opportunity to carry out this coordination.

Below, TPPA offers comments on the following subsections and topics:

- **Scope:** The Commission should ensure that these rules focus on outages and derates of both generation and transmission directly caused by cold weather. The Commission should also ensure that market participants understand what the Commission expects with certain minimum standards, as well as sustained operation.
- **Development of forms:** The Commission should create any necessary forms for this rulemaking, rather than delegating the task to ERCOT.
- **Confidentiality:** The Commission should work to ensure that winter weather readiness report forms, any summaries of those forms, and requests for good cause exceptions may be submitted and kept confidential to ensure that bad actors will not take advantage.
- **Affidavits:** The Commission should allow additional flexibility in who may sign the required affidavits. Alternatively, should the Commission require the signature of the highest-ranking official of an entity, it should provide clarification and/or examples, as this requirement is particularly unclear for MOUs.

- Good cause exceptions: The Commission should approve good cause exceptions administratively as matters of formal enforcement discretion, as it has done in the past during hurricane restoration efforts and during Winter Storm Uri. Moreover, TPPA recommends that the Commission allow good cause exceptions be granted for situations where ERCOT has already approved maintenance outages.
- ERCOT inspections: The Commission should require ERCOT to deliver any inspection reports in a written form. Moreover, the Commission should allow for an appeal process or an excuse as an affirmative defense should ERCOT require remedies to be made in an unreasonable period of time.
- Third-party assessments after repeated or major weather-related interruptions: The Commission should clarify that the requirement to undergo these assessments is forward-looking, and the Commission should remove proposed language barring an engineer from participating in multiple assessments.
- Transmission breakers and metering: The Commission should clarify that this rule should not be read as an instruction that existing breakers should be replaced with those that use sulfur hexafluoride gas.
- Transmission inspections: The Commission should clarify that ERCOT may base its inspections on a representative portion of the transmission network to avoid confusion as to whether ERCOT is required to inspect the entire system.

## II. Comments on PFP

In proposed 25.55(b)(1), the Commission provides a definition of “cold weather critical component” that ties the application of the term to unit trips, derates, and failures to start. While TPPA supports this definition as it relates to generation entities, the term is also used in the transmission weatherization sections of the proposed rule. TPPA recommends that this definition be amended to better apply to transmission as well as generation. To that end, TPPA suggests the following definition:

**Cold weather critical component** – Any component that is susceptible to extreme adverse effects from freezing temperatures, the occurrence of which is likely to significantly hinder the ability of the resource or equipment to function as designed.

In proposed **25.55(c)(1)(A)**, the Commission would require generation entities to make “all preparations necessary to ensure the sustained operation of all cold weather critical components during winter weather conditions,” but the rule does not define the length of time that “sustained operation” entails. As TPPA has noted previously in this project, no weatherization measure is indefinitely effective at the same level, and extreme weather causes similarly extreme wear and tear on facilities.<sup>2</sup> TPPA recommends that the Commission clarify the definition of “sustained operation” to define the length of time expected. TPPA has the same concerns with proposed **25.55(f)(1)**, which requires a similar effort of transmission service providers.<sup>3</sup>

In proposed **25.55(c)(1)(B)**, the Commission would require various specific mitigation measures. Specifically, the proposed rule requires the installation of adequate wind breaks for resources susceptible to outages or derates caused by wind. While TPPA agrees with this requirement for thermal generation that is exposed to wind, a strict reading of this rule could result in wind generation having to install wind breaks, which may be counterproductive. TPPA recommends that the Commission tighten this language to better reflect its intent.

In proposed **25.55(c)(1)(C)**, the Commission would require generation entities to undergo “all actions necessary to prevent a reoccurrence of any cold weather critical component failure that occurred in the period between November 30, 2020, and March 1, 2021.” This is an extremely broad requirement that may include issues totally unrelated to operation during winter weather. Given the breadth of the stated time period and the deadline for compliance, TPPA recommends that this requirement should be limited to failures that occurred directly due to winter weather, rather than one-off occurrences unrelated to cold weather operations. TPPA has the same concerns with proposed **25.55(f)(1)(C)**, which requires a similar effort of transmission service providers.

In proposed **25.55(c)(1)(E)**, the Commission would require generation entities to determine “minimum design temperature, minimum operating temperature, and other operating limitations based on temperature, precipitation, humidity, wind speed, and wind direction,” but it is unclear where these determinations come from. TPPA would appreciate clarification as to whether the Commission is envisioning an independent analysis of these specifications or if providing manufacturer specifications would suffice. TPPA has the same concerns with proposed

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<sup>2</sup> See Project 51840, Texas Public Power Association’s Response to Request for Comments at 3 (June 23, 2021).

<sup>3</sup> It is also unclear what is meant by a transmission service provider acquiring auxiliary fuels under proposed **25.55(f)(1)**.

**25.55(f)(1)(G)** and **(H)**, which requires a similar analysis of transmission service providers' equipment and substations.<sup>4</sup>

In proposed **25.55(c)(2)**, the Commission would require ERCOT to develop a winter weather readiness report form that generation entities would be required to use. Under the requirements of PURA §39.151(d), as amended by Senate Bill 2, 87th regular session (SB2), the Commission must approve any rules adopted by ERCOT. A mandatory form for a report should be considered the equivalent of a rule, and therefore, TPPA believes that the form would be subject to the approval process. Given the Commission's proposed requirement that this report be filed by December 1, TPPA believes that the Commission approval process under SB2 would not allow for enough time to develop, approve, and publish this form. Instead, TPPA suggests that the Commission use this project (or a parallel proceeding) to develop the form.<sup>5</sup> TPPA has the same concerns with the approval process for the winter weather readiness report form for transmission service providers under proposed **25.55(f)(2)** as well as the comprehensive checklist form to be developed by ERCOT under proposed **25.55(c)(3)** and **25.55(f)(3)**.

In proposed **25.55(c)(2)**, the Commission would require that generation entities submit a winter weather readiness report to both the Commission and ERCOT. These winter weather readiness reports will likely contain a great deal of confidential information, as well as information that could be used by bad actors or for terroristic purposes. TPPA would appreciate the Commission confirming that these reports could be submitted confidentially to both the Commission and ERCOT, and both entities would maintain confidentiality for these reports. TPPA has the same concerns with the winter weather readiness report required by transmission service providers under proposed **25.55(f)(2)**, as well as ERCOT's summary report of winter readiness reports from generation entities and transmission service providers under proposed **25.55(c)(4)** and **(f)(3)**, and the submission of a request for a good cause exception from generation entities and transmission service providers under proposed **25.55(c)(6)** and **(f)(4)**.

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<sup>4</sup> In addition, TPPA notes that there may be some potential overlap between the requirements of proposed **25.55(f)(1)(G)**, which would require a determination of the ambient temperature to which transmission equipment is protected and proposed **25.55(f)(1)(H)**, which would require, in part, a determination of minimum design temperatures, minimum operating temperatures, and other operating limitations based on temperature for transmission substations.

<sup>5</sup> In the past, the Commission has frequently developed and revised forms through the rulemaking process. A relatively recent example would be Project 50514, Project to Amend Class A, B, C, D Water and Sewer Annual Report Forms.

In proposed **25.55(c)(2)(B)**, the Commission would require that the winter weather readiness report form include “a notarized attestation sworn to by the generation entity’s highest-ranking representative, official, or officer with binding authority over the generation entity.” It is unclear who the Commission would consider the highest-ranking representative of a MOU would be. Reasonable interpretations of this requirement as written could require the attestation of a utility general manager, a city mayor, or a city council acting as a whole. For non-MOUs, this requirement could be read to require the signature of a CEO of a corporate parent which may not be located within Texas. In addition, TPPA has suggested in previous comments in this rulemaking that the Commission require that affidavits be signed by an executive officer instead of the highest-ranking representative.<sup>6</sup> Further, the Commission should allow for affidavits to be based on personal knowledge or by reliance on others with personal knowledge due to the broad nature of the attestation. TPPA believes that this approach provides the appropriate balance between seniority while still allowing for direct accountability regarding the actual weather preparation measures completed. TPPA has the same concerns with a similar affidavit requirement found in proposed **25.55(c)(6)(A)(v)** as it relates to a good cause exception request by a generation entity, as well as proposed **25.55(f)(2)(B)** as it relates to the attestation of a transmission service provider’s winter readiness report form and proposed **25.55(f)(4)(A)(v)** as it relates to a good cause exception request by a transmission service provider. Alternatively, TPPA requests additional clarification on how the Commission would interpret this requirement.

In proposed **25.55(c)(4)**, in addition to the confidentiality concerns addressed above, TPPA has concerns with the creation of the report itself. Under SB3, ERCOT is required to provide generation entities with a reasonable period of time in which to remedy any violation that ERCOT discovers in an inspection before ERCOT reports the violation to the Commission.<sup>7</sup> Under proposed 25.55(b)(5), the Commission defines “inspection” as “[t]he activities that ERCOT engages in to determine whether a generation entity is in compliance with subsection (c) of this section . . .” As such, ERCOT’s summary report should be considered an inspection. Because ERCOT only has nine calendar days to prepare this summary under the proposed rule, it is unlikely

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<sup>6</sup> See Project 51840, Texas Public Power Association’s Response to Staff’s Discussion Draft and Questions for Comment at 10-11 (July 30, 2021).

<sup>7</sup> TPPA notes that proposed 25.55(e) only requires ERCOT to refer to the Commission for enforcement instances where a generation entity fails to cure a deficiency identified by ERCOT within the time period determined by ERCOT.

that any generation entity will be given the reasonable period of time to remedy as required by statute. On both confidentiality and creation of the report, TPPA has the same concerns with proposed **25.55(f)(3)**, which requires a similar summary report for transmission service providers.

Under proposed **25.55(c)(6)(B)**, the Commission appears to indicate that a request for a good cause exception would be treated as a contested case, with ERCOT as a necessary party and an assigned presiding officer. TPPA believes these exceptions may not require the Commission's full contested case process, as these good cause exceptions may be as minor as asking for additional time to conduct training as per proposed 25.55(c)(1)(D), which may be necessary to ensure proper social distancing during the ongoing pandemic. Moreover, these exceptions may prove overly burdensome to the Commission's already limited resources. TPPA expects that the devastation caused by Hurricane Ida and recovery efforts in Louisiana, Mississippi, and elsewhere may result in limited parts and labor for some time, further impacting the ongoing supply-chain issues facing the electric industry. Because of this, the Commission may see an increased number of good cause exception requests that could be lengthy to process as contested cases.

As such, TPPA recommends that these good cause exceptions be granted as a matter of formal enforcement discretion, which the Commission has done during the winter storm<sup>8</sup> and as part of hurricane restoration.<sup>9</sup> As part of this effort, the Commission could require its Division of Compliance and Enforcement to produce regular reports on enforcement discretion agreements per this rule. Of course, if an agreement on enforcement discretion cannot be reached, TPPA would support the use of contested cases as a resolution mechanism. TPPA makes a similar recommendation for proposed **25.55(f)(4)**, as it applies to a good cause exception requested by transmission service providers.

Additionally, TPPA shares the concerns noted by TCPA in their June 23, 2021 comments, in which TCPA asserts that the shoulder seasons for ERCOT-approved maintenance outages of generation units coincide with the compliance deadline for the winter weather readiness report under proposed 25.55(c)(2).<sup>10</sup> As noted by TCPA, outages have been planned and resources allocated or contracted for well in advance of such outages. Therefore, TPPA urges that the good

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<sup>8</sup> See Issues Related to the State of Disaster for the February 2021 Winter Weather Event, Project 51812, Memorandum (Feb. 19, 2021).

<sup>9</sup> See Issues Related to the Disaster Resulting from Hurricane Harvey, Governors' Disaster Proclamation, Project 47552, Memorandum (Sept. 1, 2017).

<sup>10</sup> See Project 51840, Texas Competitive Power Advocate's Response to the Commission Request for Comments on Weatherization Standards at 5-6 (June 23, 2021).



cause exception process include ERCOT-approved maintenance outages as acceptable reasons for granting such an exception. An alternative approach would be to follow NRG's suggestion that time extensions be granted for those units that are unable to meet the proposed deadlines due to current ERCOT-approved maintenance outages.<sup>11</sup>

**25.55(d). Inspections for a generation entity.** Under proposed 25.55(d)(2), ERCOT would be required to provide an inspection report after an inspection of a generation entity is made. As TPPA has noted in previous comments in this rulemaking,<sup>12</sup> the Commission should ensure that this report is provided in writing, to ensure that generation entities are fully aware of the results of ERCOT's inspection.

Further, the rule allows ERCOT to require that a generation entity remedy any violations that ERCOT discovers within a reasonable period of ERCOT's own choosing. TPPA believes that the final rule should include an appeal process with the Commission if the reasonable period that ERCOT determines is, in fact, not reasonable. Alternatively, TPPA suggests that the Commission clarify that PUC Subst. R. 25.503(f)(2)(C), which allows a market participant to be excused from compliance with an ERCOT instruction under certain circumstances, would be applicable if ERCOT required a remedy within an unreasonable period of time. TPPA has the same concerns and makes the same recommendations for proposed **25.55(g)(2)**, as it applies to inspections of transmission service providers.

**25.55(e). Weather-related failures by a generation entity to provide service.** Under the proposed rule, ERCOT would be required to develop rules that specify when a generation entity must contract with a third-party professional engineer to assess the generation entity's weather preparation measures, plans, procedures, and operations after repeated or major weather-related forced interruptions of service. TPPA reads this requirement to apply if these interruptions of service occur once this rule is implemented, not that generation entities must look back and perform these studies based on historic interruptions. TPPA recommends that the Commission clarify that this provision would only apply to repeated or major weather-related forced interruptions that occur after the implementation of this rule.

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<sup>11</sup> See Project 51840, NRG's Comments on the PUCT Public Notice of Request for Comments at 5 (June 23, 2021).

<sup>12</sup> See Project 51840, Texas Public Power Association's Response to Staff's Discussion Draft and Questions for Comment at 11 (July 30, 2021).

Further, the proposed rule would require that such an inspection be performed by a qualified professional engineer who is not an employee of the provider or its affiliate *and who has not participated in previous assessments for the resource* (emphasis added). While TPPA supports the requirement that the engineer not be an employee of the provider, TPPA opposes the additional requirement that bars an engineer from participating in multiple assessments. In addition to exceeding statutory language, the additional requirement is a substantial, unnecessary burden. As TPPA has noted in previous comments, professional engineers are subject to a stringent ethics code and there is a limited supply of qualified, independent engineering firms or engineers that can provide this type of study.<sup>13</sup> The proposed rule would bar an engineer from participating in multiple assessments, even if the assessments stemmed from different root causes. Moreover, TPPA is concerned about the broadness of the requirement – depending on how the Commission interprets the meaning of “participated in previous assessments,” entire engineering firms could be disqualified due to managerial reviews of reports. TPPA suggests that this additional requirement be deleted. TPPA makes similar recommendations for proposed **25.55(h)**.

**25.55(f). Weather emergency preparedness reliability standards for a transmission service provider.** Under proposed 25.55(f)(1)(E), the Commission would require transmission service providers to confirm that the sulfur hexafluoride gas in breakers and metering and other electrical equipment is at the correct pressure and temperature to operate safely, as well as a requirement for annual maintenance testing. While many transmission breakers use sulfur hexafluoride gas, not all do. Some breakers use a vacuum; others use oil. TPPA is also unaware of any transmission metering applications for sulfur hexafluoride gas. TPPA would appreciate clarification from the Commission that these requirements only apply to existing installations that use sulfur hexafluoride gas and should not be interpreted as an instruction that existing transmission breakers (or other equipment) that do not use sulfur hexafluoride gas be replaced with those that do.

**25.55(g). Inspections for a transmission service provider.** In addition to the concerns noted above regarding the ERCOT inspection report, TPPA reiterates its concerns from previous comments in this rulemaking that does not make it adequately clear that ERCOT is not expected to conduct inspections of a transmission service provider’s entire system.<sup>14</sup> The proposed rule

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<sup>13</sup> See Project 51840, Texas Public Power Association’s Response to Staff’s Discussion Draft and Questions for Comment at 9-10 (July 30, 2021).

<sup>14</sup> See Project 51840, Texas Public Power Association’s Response to Staff’s Discussion Draft and Questions for Comment at 13 (July 30, 2021).

would require ERCOT to conduct inspections of transmission systems and facilities. TPPA believes that the final rule should explicitly allow ERCOT to conduct inspections of representative portions of a transmission service providers' systems and facilities. TPPA reiterates that a full, mile-by-mile inspection of the 46,500 miles of transmission in ERCOT would entail astronomical costs and challenges and suggests that the Commission clearly indicate that ERCOT would be encouraged to inspect portions of transmission systems and substations rather than the entire network.

### **III. Conclusion**

TPPA appreciates the opportunity to submit these comments on the PFP. As always, TPPA looks forward to working with the Commission, its staff, and the stakeholders on these important questions and this broader discussion in the coming months.

Dated: September 16, 2021

Respectfully,

A handwritten signature in black ink, appearing to read 'Taylor Kilroy', is written over a horizontal line.

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